

**DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS: 06-0508
Indiana Sales and Use Tax
For the Tax Periods 2003, 2004**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Refrigeration Equipment – Sales/Use Tax.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-5-1 et seq.; IC § 6-2.5-5-3(b); 45 IAC 2.2-5-8; *Indianapolis Fruit Co. v. Department of State Revenue*, 691 N.E.2d 1379 (Ind. Tax Ct. 1998); Sales Tax Information Bulletin 55 (May 31, 1989).

Taxpayer asserts that it uses its freezer/cooler units to temporarily store work-in-process materials, which, therefore, entitles taxpayer to the processing exemption.

STATEMENT OF FACTS

Taxpayer is a horse racing operation consisting of both live and simulcast wagering. Each of taxpayer's three facilities includes a restaurant. Taxpayer protests the imposition of sales tax for the years in question. An administrative hearing was held on June 10, 2007. The Indiana Department of Revenue ("Department") issued a Letter of Findings based on both the materials in the file and information provided by the taxpayer during the hearing. The Letter of Findings sustained the taxpayer as to taxpayer's work tables, prep tables, and equipment stands, but denied the taxpayer's protest as to the walk-in cooler/freezer units. Taxpayer requested a rehearing, alleging a misperception of facts, and wishing to provide additional information. The Department granted taxpayer's rehearing request, and scheduled the rehearing for September 20, 2007. During the rehearing, Taxpayer reiterated its arguments presented in the initial protest hearing. The Hearing Officer extended the rehearing to give the taxpayer the opportunity to provide additional documents and information in support of its arguments. Taxpayer responded with more images of the walk-in cooler/freezer units. This Supplemental Letter of Findings addresses taxpayer's supplemental arguments. Further facts will be supplied as required.

I. Refrigeration Equipment – Sales/Use Tax.

DISCUSSION

Indiana imposes a sales tax on retail transactions. IC § 6-2.5-2-1. The state also imposes a complementary use tax on tangible personal property that is stored, used, or consumed within the state. IC § 6-2.5-3-2. For both of these taxes, certain exemptions are available. IC § 6-2.5-5-1 et seq. Taxpayer invokes the equipment exemption found at IC § 6-2.5-5-3(b), which reads as follows:

Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, processing, refining, or finishing of other tangible personal property.

Taxpayer's restaurant kitchen facilities include walk-in cooler/freezer units. These units house both a cooler element and a freezer element. Taxpayer asserts that it uses the cooler element (or section) exclusively to temporarily store work-in-process. Taxpayer includes the shelving as part of the cooler section for its tax-exempt claim, asserting that the shelving is used to support the work-in-process that is temporarily stored in the cooler section. Taxpayer maintains that the cooler section and shelving used to temporarily store work-in-process is essential and integral to an integrated process and, therefore, is exempt under 45 IAC 2.2-5-8(e)(1). The regulation, in relevant part, states that "[t]angible personal property used in or for the purpose of storing work-in-process or semi-finished goods is not subject to tax if the work-in-process or semi-finished goods are ultimately completely produced for resale and in fact resold." 45 IAC 2.2-5-8(e)(1).

The Indiana Department of Revenue Sales Tax Information Bulletin 55 (May 31, 1989) is instructive:

Restaurant food heating or cooling is taxable unless it is used in the actual production and creation of food. Utilities used for warming tables and refrigeration areas are taxable unless the food is undergoing a change due to this process. **Refrigeration for storage is a taxable use** of the utilities. . . . Utilities serving a refrigerator . . . used to keep the products or the raw materials in the same condition are taxable.
[Emphasis added]

Taxpayer's additional photos of the cooler/freezer units and (presumably) the contents stored within one of the cooler/freezer units do little to contradict the auditor's finding. The additional photos do little to contradict the initial Letter of Findings. The audit report was based on the auditor's personal observation of how the taxpayer used its coolers and freezers. The auditor observed that the taxpayer used the coolers and freezers to store food, not to produce or create food. Not one of the additional photographs, or the additional information presented during the rehearing displays evidence of the walk-in cooler/freezer units serving any purpose other than storage of food products. Taxpayer has failed to establish that the taxpayer uses its cooler/freezer units to change the composition or processing of food.

In the absence of a finding that the taxpayer is producing or processing tangible personal property, there can be no "work-in-progress" and the related equipment will not qualify for the exemption. *Indianapolis Fruit Co. v. Department of State Revenue*, 691 N.E.2d 1379, 1384 (Ind. Tax Ct. 1998).

FINDING

Taxpayer's protest is respectfully denied.